

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 26, 2009

TO: Persons on the attached mailing list.

RE: Carter-CC, Ltd.
TPDES Permit No. WQ0014928001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the Chambers County Library, 202 Cummings Street, Anahuac, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

Enclosures

MAILING LIST
for
Carter-CC, Ltd.
TPDES Permit No. WQ0014928001

FOR THE APPLICANT:

James P. Hutchison
Carter-CC, Ltd.
1209 Decker Drive, Suite 100
Baytown, Texas 77520

John Wallace
Bacon & Wallace
6363 Woodway Avenue, Suite 800
Houston, Texas 77057

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Michael T. Parr, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Larry Diamond, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
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FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
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FOR THE CHIEF CLERK
via electronic mail:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
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ABERNATHY , DAVID
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ANAHUAC TX 77514-0430

BYNUM , RICHARD
HC 1 BOX 738
HANKAMER TX 77560-9601

JONES , R KIT
PO BOX 580
ANAHUAC TX 77514-0580

MOBLEY , KERRY
PO BOX 1360
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SAXMAN , GINGER
PO BOX 328A
ANAHUAC TX 77514-0328

STENGLER , MARY BETH
PO BOX 518
ANAHUAC TX 77514-0518

SYLVIA , JIMMY COUNTY JUDGE
CHAMBERS COUNTY OF
PO BOX 939
ANAHUAC TX 77514-0939

WALLACE SR , R M
PO BOX 100
WALLISVILLE TX 77597-0100

Proposed New TPDES Permit No. WQ0014928001

2009 JUN 24 PM 2:09

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
	§		
Carter-CC, Ltd. for	§	TEXAS COMMISSION ON	
	§		
TPDES Permit No. WQ0014928001	§	ENVIRONMENTAL QUALITY	

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Carter-CC, Ltd. application and Executive Director's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from the following persons: Mary Beth Stengler representing the Chambers-Liberty Counties Navigation District, R. Kit Jones representing the Trinity Bay Conservation District (TBCD), Ginger Saxman, R. M. Wallace, Sr., Kerry Mobley, Richard Bynum, and David Abernathy. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Carter-CC, Ltd. has applied to the TCEQ for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014928001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 130,000 gallons per day in the interim phase, and 250,000 gallons per day in the final phase. The proposed wastewater treatment facility will serve a proposed residential development.

The wastewater treatment facility will be located 550 feet south of Farm-to-Market Road 563 approximately 1.8 miles southeast from the intersection of Farm-to-Market Road 563 and Interstate Highway 10 in Chambers County, Texas. The facility will be an activated sludge process plant operated in the complete mix mode. Treatment units in the interim phase will include a bar screen, aeration basin, final clarifier, and a chlorine contact chamber. In the final phase there will be an additional aeration basin and chlorine contact chamber. The facility has not been constructed. The treated effluent will be discharged to Turtle Bayou; thence to Anahuac Lake; thence to Trinity River Tidal in Segment No. 0801 of the Trinity River Basin. The

unclassified receiving water uses are high aquatic life use for Turtle Bayou and for Lake Anahuac. The designated uses for Segment No. 0801 are high aquatic life use and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Turtle Bayou or Lake Anahuac, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Procedural Background

The application for a new permit was received on September 24, 2008 and declared administratively complete on December 16, 2008. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on January 14, 2009 in *The Progress* in the City of Anahuac. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on April 1, 2009 in *The Progress* in the City of Anahuac. The public comment period ended on May 1, 2009. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

Secretary of State website for all administrative rules: www.sos.state.tx.us
TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/
(select "TAC Viewer" on the right, then "Title 30 Environmental Quality")
Texas statutes: www.capitol.state.tx.us/statutes/statutes.html
TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules," then "Current TCEQ Rules," then "Download TCEQ Rules")
Federal rules in Title 40 of the Code of Federal Regulations: www.epa.gov/epahome/cfr40.htm
Federal environmental laws: www.epa.gov/epahome/laws.htm

Commission records for this facility are available for viewing and copying at TCEQ's main office in Austin at 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken), and at TCEQ's Region 12 Office in Houston at 5425 Polk Ave., Suite H. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Chambers County Library, 202 Cummings Street, Anahuac, Texas.

COMMENTS AND RESPONSES

COMMENT 1:

Mary Beth Stengler representing the Chambers-Liberty Counties Navigation District, **R. Kit Jones** representing the Trinity Bay Conservation District (TBCD), **Ginger Saxman, R. M. Wallace, Sr., Kerry Mobley, Richard Bynum, and David Abernathy** are concerned about the construction of a new treatment plant as opposed to tying into an existing wastewater treatment plant run by the TBCD. The TBCD notes that they provide service within the proposed tract via Certificate of Convenience & Necessity (CCN) No. 10997.

RESPONSE 1:

Texas Water Code, § 26.0282 provides that in “considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems not designated as by commission order . . . This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.”

It is the policy of the state to “encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” See TEXAS WATER CODE § 26.081. To implement this policy, the Applicant for a wastewater discharge permit is required to provide information regarding any wastewater treatment and/or collection systems within three miles of the area to be served. If there is a wastewater treatment or collection systems within three miles of the area to be served, the Applicant is required to provide information to the Executive Director as to whether such facility currently has the capacity to accept the volume of wastewater proposed in the application. If the capacity exists to accept the volume of wastewater proposed in the application, the Applicant is then required to attach an analysis of the expenditure required for a connection to the existing facility. Additionally, the Applicant is required to provide copies of all correspondences with the owners of the existing facilities within three miles of the proposed facility regarding connection to their system.

The Domestic Wastewater Permit Application Technical Report requires information concerning regionalization of wastewater treatment plants. During the review process an existing wastewater treatment facility was identified within three miles radius, namely, the TBCD Hankamer plant. The applicant sent a request to the TBCD for wastewater service. The TBCD responded that the existing Hankamer plant has enough capacity for a portion of the proposed development but not all of it. TBCD did state that they are planning to upgrade the Hankamer facilities and asked if the Applicant would contribute part of negotiated costs to upgrade. The Applicant responded

with a cost analysis that given the current lift stations and collection system in place, that connecting to the Hankamer plant would involve the construction of three lift stations, new force main piping, and associated facilities with an estimated cost of one million dollars. The Applicant's engineer, James P. Hutchison, P.E. stated that two treatment plants sized similarly to the proposed plant were built and installed with a cost of less than \$500,000. The Applicant stated that it is their intention to work with the TBCD to achieve a mutually beneficial solution for their need for treatment capacity and the planned development's needs. The Applicant is not required to obtain a CCN from the TCEQ in order to obtain a wastewater discharge permit. However, private permittees must obtain a CCN before they can start billing customers for water and wastewater services. Accordingly, the Executive Director has determined that the Applicant met the regionalization requirement in the Texas Water Code.

COMMENT 2:

Mary Beth Stengler representing the Chambers-Liberty Counties Navigation District, **R. Kit Jones** representing the Trinity Bay Conservation District (TBCD), **Ginger Saxman, R. M. Wallace, Sr., Kerry Mobley, Richard Bynum, and David Abernathy** are concerned with the location of the proposed discharge point into Turtle Bayou being upstream of Lake Anahuac which is used for public drinking water supply.

RESPONSE 2:

As part of the permit application process, the ED determines the uses of the receiving water and sets effluent limits that are protective of those uses. The draft permit includes effluent limitations (10 mg/l CBOD₅, 15 mg/l TSS, 3 mg/l NH₃-N, and 4.0 mg/l minimum dissolved oxygen (DO); chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow and monitoring requirements to ensure that the proposed effluent limits will not violate the Texas Surface Water Quality Standards (TSWQS) for the protection of surface water, groundwater, aquatic and terrestrial life, and human health. It also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health; and for the disposal of domestic sludge generated from the wastewater treatment facility.

In this case, the unclassified receiving water uses are high aquatic life use for Turtle Bayou and for Lake Anahuac. The designated uses for Segment No. 0801 are high aquatic life use and contact recreation. In accordance with 30 TAC Chapter 307.5 and the TCEQ implementation procedures (January 2003) for the TSWQS, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Turtle Bayou or Lake Anahuac, which have been identified as having high aquatic life uses. Existing uses will be maintained and

protected. The preliminary determination can be reexamined and may be modified if new information is received.

COMMENT 3:

Mr. Abernathy, Mr. Wallace, Ms. Saxman, and Kerry Mobley are concerned about the dangers pollutants from the proposed wastewater treatment plant would pose for the receiving water bodies.

RESPONSE 3:

Effluent discharged into water in the state from facilities regulated under the Texas Pollution Discharge Elimination System is required to meet the TSWQS. The TSWQS and other applicable rules are protective of aquatic life, human health, and the environment including the designated uses of the receiving waters. The draft permit for the facility meets the requirements of the TSWQS. The TCEQ does not anticipate that constituents in the discharge will have an adverse effect on the receiving water or its designated uses.

The effluent limitations in the draft permit are designed to maintain and protect the existing in-stream uses. The advanced treatment levels that apply to the proposed discharge are expected to maintain the water quality and protect the existing in-stream uses. The draft permit includes effluent limitations and monitoring requirements for CBOD₅, TSS, ammonia nitrogen, chlorine residual, and pH to ensure that the proposed effluent limits will not result in a violation of the TSWQS for the protection of surface water quality, and human health. It also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health and for the disposal of domestic sludge generated from the wastewater treatment facility.

COMMENT 4:

Ms. Saxman is concerned about sight, noise, and odor pollution from the plant.

RESPONSE 4:

The TCEQ rules require domestic wastewater treatment facilities to meet the buffer zone or odor abatement plan requirements at 30 TAC § 309.13(e) for the abatement and control of nuisance odor. These rules provide three options for Applicants to satisfy the nuisance odor abatement and control requirement. An Applicant can meet this requirement by ownership of the buffer zone area, by restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant, or by providing odor control plan. The Applicant is intending to meet the buffer zone requirements by ownership according to 30 TAC Chapter 309.13(e)(3). If nearby residents experience nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, such incidents may be reported to the TCEQ by

calling the toll-free Environmental Complaints Hotline at 1-888-777-3186 or by calling the TCEQ Region 12 Office in Houston at (713) 767-3500. Citizen complaints may also be filed on-line at www.tceq.state.tx.us/compliance/complaints/index.html. Following an investigation, if noncompliance is documented or the Applicant fails to comply with the requirements in the permit, the Applicant may be subject to an enforcement action that could lead to the assessment of administrative fines and penalties.

The issuance of a permit does not authorize any invasion of personal or property rights or any violation of federal, state, or local laws or regulations. Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 5:

Ms. Stengler, Mr. Jones, Mr. Bynum, and Mr. Abernathy are concerned about the plant operating properly. Mr. Bynum is concerned about avoiding catastrophic events. Ms. Stengler and Mr. Jones are concerned, in particular, with plant operation during power outages and potential overflows into Lake Anahuac during storm events.

RESPONSE 5:

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.

The Applicant is required to meet the provisions related to emergency power requirements contained in 30 TAC §§ 217.36 and 217.37 as well as other requirements related to individual treatment units contained in 30 TAC Chapter 217.

The Applicant is required to report any unauthorized discharge to TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge or bypass to TCEQ within the prescribed time-period, they will be subject to enforcement action. TCEQ conducts periodic inspections of wastewater facilities and conducts investigations based on complaints received from the public. To report suspected incidents of permit violations or to file a complaint about this or any other facility, please contact the TCEQ Houston Regional Office at (713) 767-3500, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. Citizen complaints may also be filed on-line at www.tceq.state.tx.us/compliance/complaints/index.html. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

The wastewater permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall or storm events and periods of flooding. In addition, Other Requirement No. 4 in the draft permit requires the permittee to comply with the requirements of 30 TAC § 309.13(a) as it relates to restrictions of siting a wastewater treatment plant in the 100-year flood plain. Other Requirement No. 5 requires the permittee to provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

- No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By



Michael T. Parr, Staff Attorney
Environmental Law Division
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REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on June 24, 2009, the "Executive Director's Response to Public Comment" for Permit No. WQ0014928001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Michael T. Parr, Staff Attorney
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State Bar No. 24062936

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COMMISSION
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